

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY J. GIORDANO,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

Case No. 2:20-cv-02082-JDP (SS)

ORDER GRANTING PLAINTIFF'S MOTION
FOR ATTORNEY FEES UNDER 42 U.S.C.
§ 406(b)

ECF No. 21

Plaintiff's counsel moves for an award of attorney fees under 42 U.S.C. § 406(b). ECF No. 21. Plaintiff entered into a contingent fee agreement that provided he would pay counsel twenty-five percent of any award of past-due benefits. ECF No. 21-3. After this court remanded this action for further proceedings, plaintiff was found disabled and awarded \$114,556.12 in past-due benefits. ECF No. 21-1. Counsel now seeks attorney's fees in the amount spent \$22,639.03, which is less than twenty-five percent of total past-due benefits plaintiff was awarded.

An attorney is entitled to reasonable fees for successfully representing social security claimants in district court.

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent

1 of the total of the past-due benefits to which the claimant is entitled
2 by reason of such judgment.

3 42 U.S.C. § 406(b)(1)(A). Rather than being paid by the government, fees under section
4 406(b) are paid by the claimant from the awarded past-due benefits. *Crawford v. Astrue*, 586
5 F.3d 1142, 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht v. Barnhart*, 535 U.S. 789, 802
6 (2002)). The twenty-five percent statutory maximum fee is not an automatic entitlement; the
7 court must ensure that the requested fee is reasonable. *Gisbrecht*, 535 U.S. at 808-09 (“We hold
8 that § 406(b) does not displace contingent-fee agreements within the statutory ceiling; instead, §
9 406(b) instructs courts to review for reasonableness fees yielded by those agreements.”). In
10 assessing whether a fee is reasonable, the court should consider “the character of the
11 representation and the results the representative achieved.” *Id.* at 808. A “court may properly
12 reduce the fee for substandard performance, delay, or benefits that are not in proportion to the
13 time spent on the case.” *Crawford*, 586 F.3d at 1151.

14 The court finds that the requested fees are reasonable. Counsel’s billing records reflect
15 that he spent 19.1 hours litigation, and a paralegal spent an additional 12.4 hours. ECF No. 21-4.
16 Counsel’s request for \$22,639.03, which is less than the statutory maximum, would constitute an
17 hourly rate of approximately \$719 for attorney and paralegal services.¹ Counsel did not engage in
18 dilatory conduct and his performance was not substandard. Indeed, counsel’s representation
19 resulted in this matter being remanded for further proceedings, which resulted in a favorable
20 decision and an award of benefits. ECF No. 21-2. Given counsel’s experience, the result
21 obtained in this case, and the risk of loss in representing plaintiff, the court finds the hourly rate
22 reasonable. *See, e.g., De Vivo v. Berryhill*, No. 1:15-cv-1332-EPG, 2018 WL 4262007 (E.D. Cal.
23 Sept. 6, 2018) (awarding fees at effective hourly range of \$1,116.26); *Jamieson v. Astrue*, No.
24 1:09-cv-0490 LJO DLB, 2011 WL 587096 (E.D. Cal. Feb. 9, 2011) (finding fee at effective
25 hourly rate of \$1,169.49 reasonable); *Naddour v. Colvin*, No. 13-CV-1407-BAS (WVG), 2016
26 WL 4248557 (S.D. Cal. Aug. 11, 2016) (awarding fee at effective hourly rate of \$1,063); *Palos v.*

27 ¹ A paralegal spent an additional 12.4 hours working on this case. The \$1,85.29 does not
28 account for this additional time.

1 *Colvin*, No. CV 15-04261-DTB, 2016 WL 5110243 (C.D. Cal. Sept. 20, 2016)) (finding fee at
2 effective hourly rate of \$1,546.39 reasonable).


3 Accordingly, it is hereby ORDERED that:

4 1. Plaintiff's counsel's motion for attorney's fees, ECF No. 21, is granted.

5 2. Plaintiff's counsel is awarded \$22,639.03 in fees pursuant to 42 U.S.C. § 406(b).

6
7 IT IS SO ORDERED.

8
9 Dated: December 9, 2022


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE